



POLICE DEPARTMENT

NEW YORK, N.Y. 10038

DEPUTY COMMISSIONER-TRIALS

In the Matter of the Disciplinary Proceedings

- against - : FINAL
Police Officer Wilson Prieto : ORDER
Tax Registry No. 949507 : OF
40 Precinct : DISMISSAL

Police Officer Wilson Prieto, Tax Registry No. 949507, Shield No. 12523, Social Security No. ending in [REDACTED] having been served with written notice, has been tried on written Charges and Specifications numbered 2015-13794 and 2015-13805 as set forth on forms P.D. 468-121, dated July 29, 2015 and July 10, 2015, and after a review of the entire record, has been found Guilty of Specification Nos. 1, 2, 3 and Specification No. 4 is dismissed under Charges and Specifications numbered 2015-13794; and Guilty of Specification Nos. 1 and 2 under Charges and Specifications numbered 2015-13805.

Now therefore, pursuant to the powers vested in me by Section 14-115 of the Administrative Code of the City of New York, I hereby DISMISS Police Officer Wilson Prieto from the Police Service of the City of New York.

James P. O'Neill
JAMES P. O'NEILL
POLICE COMMISSIONER

EFFECTIVE: 0001 hrs. January 3, 2017



POLICE DEPARTMENT
NEW YORK, N.Y. 10038
DEPUTY COMMISSIONER-TRIALS

September 30, 2016

-----X
In the Matter of the Charges and Specifications : Case No.
- against - : 2015-13794
Police Officer Wilson Prieto :
Tax Registry No. 949507 :
40 Precinct :
-----X
At: Police Headquarters
One Police Plaza
New York, New York 10038
Before: Honorable Robert W. Vinal
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Jennifer Kim Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For the Respondent: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

To:

HONORABLE JAMES P. O'NEILL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NEW YORK 10038



POLICE DEPARTMENT CITY OF NEW YORK

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Wilson Prieto
Tax Registry No. 949507
40 Precinct
Disciplinary Case Nos. 2015-13794 & 2015-13805

Police Officer Henry Reyes
Tax Registry No. 949538
40 Precinct
Disciplinary Case No. 2015-13804

Charges and Specifications:

Disciplinary Case No. 2015-13794

1. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about July 7, 2014, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer wrongfully asked to see and touch the breasts of a person known to the Department.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONDUCT – PROHIBITED CONDUCT

2. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about January 8, 2015, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Police Officer wrongfully sent sexually explicit text messages to a person known to the Department, who he had previously arrested.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONDUCT – PROHIBITED CONDUCT

3. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about January 8, 2015, knowingly associated with a person reasonably believed to have engaged in criminal activity.

P.G. 203-10, Page 1, Paragraph 2 – PUBLIC CONDUCT – PROHIBITED CONDUCT

4. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about May 29, 2015, during an official Department interview conducted pursuant to Patrol Guide Section 206-13, did wrongfully make false and misleading statements, to wit: said

Police Officer denied sending text messages to a person known to the Department, who he had previously arrested.

P.G. 203-08, Page 1, Paragraph 1 – PUBLIC CONDUCT – PROHIBITED CONDUCT

Disciplinary Case No. 2015-13805

1. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about June 12, 2014, wrongfully made inaccurate entries in Department records, in that said Officer prepared a Complaint Report and classified the incident as a petit larceny when it should have been classified as a grand larceny.

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY- GENERAL

2. Said Police Officer Wilson Prieto, while on-duty and assigned to the 40th Precinct, on or about June 12, 2014, wrongfully failed to make entries in his Activity Log regarding his activity during his assigned tour.

P.G. 212-08, Pages 1-2, Paragraph 1 – ACTIVITY LOGS

Disciplinary Case No. 2015-13804

1. Said Police Officer Henry Reyes, while on-duty and assigned to the 40th Precinct, on or about June 12, 2014, wrongfully made inaccurate entries in Department records, in that said Officer prepared a Complaint Report and classified the incident as a petit larceny when it should have been classified as a grand larceny.

P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY- GENERAL

Appearances:

For the Department: Jennifer Kim, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondents: John Tynan, Esq.
Worth, Longworth & London, LLP
111 John Street - Suite 640
New York, NY 10038

Hearing Dates: June 3 and June 16, 2016

Decision:

Disciplinary Case No. 2015-13794: Respondent Prieto is found guilty of Specification Nos. 1, 2 and 3 and Specification No. 4 is dismissed.

Disciplinary Case No. 2015-13805: Respondent Prieto is found guilty.

Disciplinary Case No. 2015-13804: Respondent Reyes is found guilty.

Trial Commissioner:

ADCT Robert W. Vinal

REPORT AND RECOMMENDATION

The above-named members of the Department appeared before me on June 3 and June 16, 2016. Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. The Department called Sergeant Brian Natoli as a witness in Case Nos. 2015-13804 & 2015-13805, and Sergeant Hiram Nieves and Person A as witnesses in Case No. 2015-13794. Each Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent Reyes guilty of the sole charge against him under Disciplinary Case No. 2015-13804; I find Respondent Prieto guilty of both charges against him under Disciplinary Case No. 2015-13805; I find Respondent Prieto guilty of the first three charges against him under Disciplinary Case No. 2015-13794 and I recommend that the fourth charge be dismissed.

FINDINGS AND ANALYSIS REGARDING CASE NOS. 2015-13804 & 2015-13805

It is not disputed that on June 12, 2014, Respondents Reyes and Prieto were on duty, partnered together, assigned to the 40 Precinct Burglary Apprehension Team. Respondent Reyes was operating their Radio Motor Patrol car (RMP) and Respondent Prieto was serving as the recorder. At about 0910 hours, they drove to 3rd Avenue and Melrose Avenue, the Bronx to respond to a "10-32" (larceny in progress) radio run that had been transmitted as the result of a call made to 911 by [REDACTED]. When they arrived at the scene, [REDACTED] got into their RMP. They drove around canvassing the area, but [REDACTED] did not point out anyone on the street as being a perpetrator. In dispute is what [REDACTED] told Respondents Reyes and Prieto about the manner in which her headphones were stolen from her.

The Advocate offered in evidence a transcript of the recording of [REDACTED]'s call to 911. [Department Exhibit (DX) 2]. [REDACTED] told the 911 operator, "I've just been robbed" by "two black young boys" who "snatched my Beats off my head and ran."

The Advocate also offered in evidence the complaint report (DX 4) that Respondent Reyes prepared in which he classified the crime that had been committed against [REDACTED] as a "petit larceny." [The narrative section of this complaint report states: "C/V (complaining victim) states that she was walking down the street when she dropped her Dre-Beats headphones and an unknown perp took them and fled on foot..."]

In addition, the Advocate offered in evidence Respondent Prieto's Activity Log (DX 3) which shows that he made no entries at all in his Activity Log on June 12, 2014, even though he performed a full tour of duty on that day.

The Advocate called Sergeant Brian Natoli of the Quality Assurance Division (QAD) who testified that after an anonymous allegation was received by the Internal Affairs Bureau (IAB) that the Commanding Officer of the 40 precinct was downgrading crimes, QAD conducted a crime classification audit at the 40 precinct which included reviewing past complaint reports, listening to recordings of the 911 calls that had resulted in complaint reports, and interviewing complainants. The complaint report that Respondent Reyes prepared regarding [REDACTED]'s allegation and the recording of her call to 911 were reviewed by QAD.

On October 20, 2014, a recorded telephone interview of [REDACTED] was conducted by Sergeant Nicholas Spataro (DX 1). [The transcript of this interview shows that Spataro told [REDACTED] that he was calling her to follow up on the stolen headphones complaint she had made on June 12, 2014. He then told her, "I noticed on the report you prepared, it doesn't match what you told 911. So I wanted to see what actually happened." He then asked her, "You had called

911 and you had mentioned to the dispatcher that two males had taken [sic] your Beat headphones off your head and fled. Is that correct?" She responded, "Yes, it was a snatch-and-run." When Spataro then told her that the complaint report stated that her headphones had fallen on the ground and were picked up by the perpetrators, [REDACTED] stated, "No. That was not what I said to him at all . . . I had told them I was back from taking my son to school and I had felt the two gentlemen behind me. So I was like dissing and dodging between people trying to get away but . . . he had caught me just in time and snatched the headphones right off my head and booked it straight and turned the block." She denied that her headphones had fallen off her head at any point, reiterating that "in this case, they were snatched right off my head."]

Natoli confirmed that [REDACTED] was never specifically asked by Spataro whether she had embellished what she told the 911 operator in order to obtain a faster police response to her 911 call and that nothing [REDACTED] said during the interview indicated that she was unhappy with the way Respondents attempted to locate the perpetrator who stole her headphones. Natoli concluded that [REDACTED]'s allegation was misclassified on the complainant report Respondent Reyes' prepared as a petit larceny, a misdemeanor, when it should have been classified as grand larceny fourth degree, a felony, because the headphones had been removed from her person.

Respondent Reyes testified that an agitated [REDACTED] told him that as she was walking to the train station, she dropped her headphones as she was getting her Metrocard out of her book bag, and that a black male came right behind her, picked the headphones up, and ran off with them. Respondent Reyes further contended that [REDACTED] "didn't want to make the report because she was not going to get the headphones back and she was in a rush to get to work," so he prepared the complaint report after she left. When he was asked if he was the officer who had

predominantly spoken with [REDACTED] he responded, "We both were." Respondent Reyes denied having any conversation with [REDACTED] outside his patrol vehicle.

Respondent Prieto testified that [REDACTED] got into their RMP and stated "that she was pulling some Metrocard or something out of her bag, she had dropped her headphones and an unknown person came and just grabbed them and took off up on Melrose." Respondent Prieto recalled that after [REDACTED] got out of their RMP, he and Respondent Reyes remained seated next to each other inside the RMP, and "we finish the complaint after she left." He asserted that he did not review the scratch complaint report after Respondent Reyes wrote it out. Respondent Prieto confirmed that when he was asked at his official Department interview whether he ever heard [REDACTED] say that her headphones had been taken off her head, he had answered, "No." He confirmed that he performed a full tour of duty on June 12, 2014. He testified that he had no reason for why he made no entries at all in his Activity Log on June 12, 2014.

Analysis

The statement [REDACTED] made to the 911 operator that the perpetrator had "snatched my Beats off my head and ran" (DX 2), and the statements [REDACTED] made to Sergeant Spataro (DX 1) that she told the responding officers that her headphones "were snatched right off my head," and that she never told them that her headphones had fallen off her head and were picked up by the perpetrator, were offered as hearsay evidence at this trial. Hearsay is admissible at a Department disciplinary trial and may form the sole basis for making findings of fact.¹ Where the hearsay statement of a complainant is offered into evidence at a Department disciplinary trial, it can constitute substantial evidence which is sufficient to support a guilty finding where it is found to be reliable, credible and probative of the issue to be determined at the trial.²

¹ RCNY Title 38, 15-04(e)(1).

² *Saunders v. City of New York*, 273 AD2d 103 (1st Dep't 2000), lv. to appeal denied, 95 NY2d 766 (2000).

I credit [REDACTED]'s statements because what she told Sergeant Spataro is consistent with what she told the 911 operator, and because [REDACTED] believed that the theft of her headphones had been recorded by a security camera. [REDACTED] told the 911 operator that there was "a camera at the deli" nearby and that if "you come watch the video, you definitely see" the perpetrator "snatch my Beats off and run..." (DX 2 p. 3) It is highly unlikely that [REDACTED] would falsely assert to the 911 operator that her headphones had been snatched off of her head if she believed, as she clearly did, that the police would be able to obtain and view a video which would depict exactly how her headphones were stolen from her.

Finally, I credit [REDACTED]'s statements because the record is devoid of any reason or motive [REDACTED] had to falsely assert that her headphones had been snatched while she was wearing them, rather than snatched off of the ground just after they had fallen off of her head, since either snatching action by the perpetrator would have constituted stealing her headphones, which was the gist of her complaint.

As a result of their Department training regarding the Penal Law, Respondents knew, or should have known, that when a perpetrator removes property from the victim's person the perpetrator commits the felony of Grand Larceny in the fourth degree.³ Since I credit [REDACTED]'s claim that she told Respondents that her headphones had been snatched off of her head, Respondent Reyes' entry on the complaint report that the crime that had been committed against Rivera was "petit larceny" was inaccurate, as was his entry in the narrative section of the complaint report that [REDACTED] had "dropped her Dre-Beats headphones." (DX 4)

Although Respondent Reyes wrote out the scratch complaint report, Respondent Prieto's testimony at this trial establishes that he was jointly culpable for the generation of a complaint

³ Penal Law section 155.30 (5).

report that classified the theft of [REDACTED]'s headphones as a petit larceny when the theft should have been classified as a grand larceny. Respondent Prieto testified at this trial that after [REDACTED] got into their RMP, she stated that as "she was pulling some Metrocard or something out of her bag, she had dropped her headphones and an unknown person came and just grabbed them and took off up on Melrose." (Tr. p. 83-84)

Moreover, when Respondent Prieto was asked at his official Department interview whether he ever heard [REDACTED] say that her headphones had been "taken off her head," he answered, "No." Since I credit [REDACTED]'s claim that she told the officers what she had told the 911 operator, that her headphones had been snatched off of her head, I do not credit Respondent Prieto's assertions.

Finally, Respondent Prieto testified at this trial that after [REDACTED] exited their RMP and while he and Respondent Reyes were seated next to each other in the RMP, "we finish the complaint after she left." (Tr. p. 85-86) Thus, I find that Respondent Prieto was equally complicit for the misclassification of the theft of [REDACTED]'s headphones as a petit larceny rather than a grand larceny on the complaint report.

Therefore, I find Respondent Reyes guilty of the sole charge against him and I find Respondent Prieto guilty of Specification No. 1 of the charges against him.

As to Specification No. 2 against Respondent Prieto, his Activity Log shows that he failed to make any entries on June 12, 2014, (DX 3) despite the fact that he performed a full tour of duty on that date. Since he testified at this trial that he had no reason for why he made no entries on that date (Tr. p. 76), I also find him guilty of the second charge against him.

FINDINGS AND ANALYSIS REGARDING CASE NO. 2015-13794

It is not disputed that on July 7, 2014, Respondent Prieto was on duty; that he arrested Person A for having committed petit larceny inside a shoe store in the Bronx; that he transported her to the 40 Precinct; that he lodged her in a holding cell; that he issued her a Desk Appearance Ticket (DAT); and that she was released from custody at the precinct.

It is also not disputed that on January 8, 2015, Respondent Prieto was on duty; that he arrested Person B; that he took possession of Person B's cell phone and other property; that Person A, who was Person B's girlfriend, showed up at the arrest location; that Person A requested to be given Person B's property; and that Respondent Prieto told her that he could not give her Person B's property.

Person A testified that when Respondent Prieto arrested her on July 7, 2014, she believed that she could not be issued a DAT and released from custody because she had a lengthy criminal history. She testified that Respondent Prieto told her he could get an "~~outside defense~~" which would allow her to receive a DAT and be released from the 40 Precinct within twenty minutes on the condition that she show him her breasts. Because she knew it could be a lengthy wait before she could be arraigned before a judge, and because she knew that it "is easier to fight a case from the outside than from the inside," she agreed to his offer. She explained, "And how it would happen is that he would, I would ask for a cigarette, he would take me to the bathroom, and that's where it would happen I agreed, we went to the bathroom and he was holding the door with his foot ... and I showed him my boobs. He went to touch me and then it was done and I was out in 20 minutes." Person A testified that Respondent Prieto touched her on her breast and that it was "quick." She stated that she had a cigarette in the bathroom but could not recall if Respondent gave it to her. She .. felt degraded" afterwards and found the

incident embarrassing to talk about. When she appeared in court, she pleaded guilty to a charge of petit larceny. She could not recall what sentence she received.

Person A testified that she has been on and off of a methadone program to combat her drug addiction and that she was in this program on the date of the incident and when she testified at this trial. She agreed that she had been arrested more than 30 times prior to July 7, 2014. The longest sentence she received was three years after she was convicted of burglary in the third degree, which she served beginning in 2005.

When Respondent arrested Person B for petit larceny on January 8, 2015, Person A was present and saw Respondent. She then came to the precinct to collect Person B's property but was not given his cell phone. While Person B was at the 40 precinct awaiting transport to central booking, Person A received text messages from Person B's phone. She recognized the messages as coming from Person B's number because his picture and number came up, indicating that the message was from his phone.

Person A testified that she observed Person B being arrested by an officer who looked familiar and that the officer asked if she remembered him. She told him that she did because it was the officer who had arrested her and asked to see her breasts six months before. The officer told her that Person B did not want her to have his cell phone and that it would be vouchered.

When Person A arrived home, she received a text message sent from Person B's cell phone asking how she was doing. She knew it was not Person B who was sending her this message because he was still in custody and he would not have been permitted to possess his cell phone while he was inside a holding cell. She "just knew" by the messages that it was "the officer" who had asked to see her breasts, though she conceded that she did not ask who was sending the messages. She recalled feeling "harassed" and she feared that she might be arrested because

during their text exchange she had refused his request that he be allowed to come to her residence and his request that she send him photos of herself.

After speaking with Person B once he was released, she reported both the July 7, 2014 incident and the January 8, 2015 text messages to IAB. She explained that she had not previously reported the July 7, 2014 incident because she did not view it as a big deal, it was over quickly and she was happy to have been released quickly with a DAT. She gave IAB investigators her cell phone and they took photos of the January 8, 2015 text message exchange. This was the first time Person A had made a complaint against a police officer.

Sergeant Hiram Nieves of IAB testified that his investigation of Person A's complaint confirmed that Person B's cellphone had been vouchered by Respondent Prieto for safekeeping following his arrest of Person B. IAB investigators took photos of Person A's cell phone displaying the text messages that were exchanged on January 8, 2015 (DX 1). The text messages between Person A's cell phone (Person A) and Person B's cell phone (███████████) are as follows:

███████████ What's up?

Person A: What u mean .. what's up with u?

███████████ Nothing what u doing...U look hot

Person A: Really u remember me

███████████ Of course... u don't?

Person A: Of course

███████████ Wyd...U still look good

U have a man

Person A: Yup...relationship

███████████ U alone

Person A: Yes . . . Y? . . . Is he getting a DAT

███████████ Show me some of you. U don't invite me to come over...Yes.

Person A: Is he coming home

[REDACTED] Not yet at 12 maybe
Person A: Why
[REDACTED] takes time...show me some good yo
Person A: You saw some . . . on that phone
[REDACTED] Show me some now
Person A: How
[REDACTED] I want see it on person. Take a pic. Send it. Send me u pussy. U not gonna invite me over we can have fun while his out
Person A: Your off . . . Problem I don't live alone
[REDACTED] U said u did. Thought u alone
Person A: Well it's a room
[REDACTED] What u mean . . . ?
Person A: ?
[REDACTED] Yo I helped u out last time u forgot. . . How abt a pack of cigarettes n drinks . . . Damn u like that . . . No pic either
Person A: I know but I'm giving up my dignity.
[REDACTED] Ok cool. U don't want me to. Yo I helped u out remember
Person A: So u mean I owe you my life
[REDACTED] There won't b no strings attach. Na but u kw me am cool. I was cool with u . . . Ok I guess u don't want it
Person A: I thank u a lot but when do we stop
[REDACTED] What...Ok so...Whats up...I was gnna buy cigarettes and drinks...Ok what? . . . Tonight? At 7...in an hour...in u place...u room...u alone tho
Person A: I'm going in the shower
[REDACTED] U sure u alone
Person A: Yes but there two other rooms....Yesssss...me and my kitten
[REDACTED] Lol
Person A: I'm going in the shower
[REDACTED] In u room...ok
Person A: Richie is not coming home
[REDACTED] Ok...At 12 yes yes

Person A: he got a DAT?
[REDACTED] Take a pic yo
Person A: He got a DAT?
[REDACTED] Ya...at 12
Person A: He knows
[REDACTED] Na...Pic yo... Let's see it... Take one... I did... Hope u do too... It give the phone.
Person A: Take what
[REDACTED] Pic... So????... Yo... delete msgs... Delete it.

Sergeant Nieves testified that Person B provided his cell phone to IAB and that an analysis performed by Computer Crimes Group 7 revealed that the text message exchange on January 8, 2015 had been deleted from Person B's cell phone, although it could not be determined when the messages had been deleted. The records for Person B's cell phone number phone ([REDACTED] were subpoenaed from Sprint, his cell phone carrier, regarding calls and texts made from Person B's cell phone on January 8, 2015. Nieves testified that Person B could not have sent the messages because he was in custody in the cell area at the time the messages were sent. The subpoenaed records for Person B's phone provided timestamps of when text messages were sent and received. Nieves cross-referenced these timestamps with the time of Person B's arrest and processing. Person B was arrested at approximately 1600 hours on January 8, 2015, arrived at the precinct at 1610 hours, and was transported to central booking at approximately 1750 hours. Nieves testified that the cell phone records showed that 135 messages were sent from and received by Person B's phone.

An internal investigation worksheet (No. 71) entitled "Review of Text/Phone Call Records for [REDACTED]," outlining Nieves' analysis of Person B's phone records was entered into evidence (DX 2). This worksheet states: "I reviewed the records for Person B' cell phone number [REDACTED], which the C/V Person A claims she was receiving messages from

while Person B was arrested alleging that the subject officer PO Prieto was using Person B's cell phone. The review determined the following: Arrest time 1605 hours: No Text or Phone Calls. Arrival at the 40 precinct 1610 hrs: 73 Text Messages from Person B' cell phone [REDACTED] to Person A's cell phone [REDACTED] 62 Text messages from Person A's cell phone [REDACTED] to Person B's cell phone [REDACTED] 135 total text messages from arrival at command until when Person B was transported. 5 phone calls from Person B's cell phone to Person A's cell phone. Transport to Bronx Central Booking 1750 hrs: 5 Text Messages from Person B's cell phone [REDACTED] to Person A's cell phone [REDACTED] 3 phone calls from Person B's cell phone to Person A's cell phone. Cell Phone Invoiced 2006 hrs: No Text or Phone Calls."

Nieves agreed that other uniformed and civilian members of the service had access to the processing area where Person B was processed and booked. He was unaware if there was a passcode on Person B cell phone. Nieves did not interview any members of Respondent's team to ask them whether they saw Respondent texting or using a cell phone. He agreed that the text messages sent to Person A contained no name or address that specifically identified Respondent as the person who sent the text messages to her.

Respondent Prieto denied that he had engaged in any of the misconduct he is charged with. In his testimony at this trial regarding his arrest and processing of Person A on July 7, 2014, Respondent Prieto denied that he had asked her to take her shirt off or that he had touched one of her breasts. He explained that Person A was issued a DAT "because it was a petty crime and she had no outstanding warrants, and it was approved by Albany and also with the sergeant."

In his testimony at this trial regarding his arrest of Person B on January 8, 2015, he recalled being approached by Person A right after he had arrested Person B. She asked about picking up Person B's

property at the precinct. He explained that Person B did not qualify for a DAT because he had an outstanding warrant. When Person A came to collect Person B's property, Respondent did not give her Person B cell phone because Person B "refused to give her the phone. He wanted it to be vouchered." Respondent testified the phone was then vouchered and placed in a security envelope which he left on a desk inside the Burglary Apprehension Team office. Respondent asserted that everyone inside the precinct had access to the office.

At his May 29, 2015 official Department interview, Respondent initially agreed that he was in possession of Person B's property "the entire time" and that if he had walked away from the team's desk, the property would have gone into a desk drawer that "usually is locked for the most part." However, he stated later during the interview, "I wasn't holding the phone the entire time. It was in a secure envelope in a desk in the office," which he asserted the entire team had access to. Respondent Prieto denied that he had sent any text messages to Person A on January 8, 2015 using Person B's cell phone.

Analysis

Under Specification No. 1, it is charged that on July 7, 2014, Respondent Prieto "wrongfully asked to see and touch the breasts of" Person A testified at this trial that although Respondent Prieto asked to see her breasts, he never asked her if he could touch her breasts. However, Person A testified that when she showed him her breasts, Respondent Prieto touched one of her breasts.

The believability of Person A's testimony must be examined in light of the fact that she is an admitted drug user and the fact that she did not lodge a complaint against Respondent Prieto for six months, and even then not until after Person B, who had been arrested by Respondent Prieto, had been released from custody and had encouraged her to make a complaint.

However, her testimony at this trial had the ring of truth because she candidly acknowledged her drug use and her criminal record, because her testimonial demeanor was forthright, and because her testimony was unembellished. She candidly admitted that she agreed to Respondent's request that she show him her breasts because she very much wanted to receive the DAT he had promised her. She wanted to be issued a DAT because she knew that if she did not receive a DAT she might have to wait a long time inside a cell until she could be brought before a judge to be arraigned and because she was concerned that based on her criminal record she might be retained in custody and she knew from experience that it "is easier to fight a case from the outside than from the inside."

Also, if Person A was inventing a false allegation against Respondent Prieto, it is likely that Person A would have claimed that he had touched both of her breasts or that she would have exaggerated the manner in which he had touched her breast, yet she did not do so. On the contrary, she candidly described his touch to her breast as "quick." Finally, Person A did not assert that she had been lied to by Respondent Prieto. She readily agreed that Respondent Prieto had kept his word and performed his end of the bargain they had agreed to by issuing her a DAT and that she was happy to be released from custody so quickly.

Person A's claim that Respondent Prieto asked to see her breasts and that she showed her breasts to him on July 7, 2014, is supported by the text messages sent to her on January 8, 2015, from Person B's cell phone. As detailed in the analysis below regarding Specification No. 2, I find that it was Respondent Prieto who sent these text messages to Person A using Person B's cell phone. The content of the text messages Respondent Prieto sent to Person A on January 8, 2015, is consistent with her claim that six months before he had asked to see her breasts, that she had displayed her breasts to him, and that he had then done her the favor of arranging to have her

receive a DAT and be released from custody at the precinct. In the text messages Respondent Prieto sent to Person A, he reminds her that "I helped u out remember; "I helped u out last time;" and "I was cool with you." He told her that she looked "hot" and asked her if he could come to her residence. When she told him that she did not want him to come over, he texted her, "Take a pic. Send it. Send me u pussy."

Based on this analysis, I find Respondent Prieto guilty of having wrongfully asked to see the breasts of Person A, an arrestee.

Under Specification No. 2, Respondent Prieto is charged with sending sexually explicit text messages to Person A from Person B's cell phone on January 8, 2015. Respondent admitted at his official Department interview that he took possession of Person B's cell phone when he arrested him on January 8, 2015, and that Person B was not in possession of his cell phone while he was inside a holding cell at the 40 Precinct. Nieves' testimony established that the text messages that were sent to Person A (DX 1) were sent while Person B was in custody.

In his testimony at this trial, Respondent asserted that he left Person B's cell phone on top of a desk where anyone who was inside the 40 Precinct could have picked it up and sent the text messages that Person A received on her cell phone. Thus, Respondent argued that even though he had arranged for Person A to be issued a DAT six months earlier, it was pure coincidence that at a point in time when he was supposed to safe-guarding Person B's cell phone, Person A was receiving text messages from someone who was reminding her that "I helped u out last time and cool with you." I reject Respondent's argument because his coincidence claim is highly unlikely.

I also reject Respondent's self-serving trial testimony that he left Person B's cell phone on top of a desk where it could be easily accessed by anyone inside the station house, because it is inconsistent with statements Respondent made at his official Department interview. At this interview, Respondent initially stated that he was in possession of Person B's cell phone "the entire time" and that during the only period of time when he was not personally holding Person B's phone, he had placed it inside a locked desk. (DX 3 p. 36, lines 1-5).

Finally, the sexual content of the text messages Respondent Prieto sent to Person A on January 8, 2015, is established by the text messages themselves, as noted above under Specification No. 1. Therefore, Respondent Prieto is found guilty of Specification No. 2.

Under Specification No. 3, Respondent Prieto is charged with knowingly associating with Person A, a person reasonably believed to have engaged in criminal activity who he had previously arrested. It is not disputed that on July 7, 2014, Respondent Prieto arrested Person A for having committed a petit larceny. Respondent Prieto testified that he is not sure whether he personally performed a criminal history record check on her (which would have revealed that she had been arrested more than 30 times and that her record included a felony conviction for burglary for which she was sentenced to serve three years in prison). Nonetheless, Respondent Prieto should not have been associating with Person A, a person he reasonably believed had engaged in criminal activity, by sending text messages to her on January 8, 2015 when he had arrested her only six months before. Therefore, Respondent Prieto is found guilty of Specification No. 3.

With regard to Specification No. 4, Patrol Guide Procedure No. 203-08, "Making False Statements," mandates that: "The Department will not bring false official statement charges in situations where, as opposed to creating a false description of events, the member of the Department merely... denies an administrative charge of misconduct" during an official

Department interview. Despite this mandate, Specification No. 4 charges Respondent Prieto with "making false and misleading statements" during an official Department interview when he denied sending text messages to Person A. This charge does not refer to any false description of events that Respondent Prieto allegedly created at his official Department interview when he was asked if he had sent text messages to Person A. Thus, the charge, on its face, as worded, appears to violate the prohibition established by Patrol Guide Procedure No. 203-08.

Moreover, I find that at his official Department interview Respondent Prieto merely denied the accusation that he had sent text messages to Person A. The transcript of Respondent Prieto's official Department interview shows that each time he was asked whether he had sent text messages to Person A, he simply denied that he had sent text messages without creating a false description of events regarding who could have sent these text messages. His interviewers asked him four separate times whether he had used Person B's cell phone to send any text messages to Person A. All four times, he merely answered in the negative (DX 3 p. 26, lines 4-6; p. 30, lines 5-7; p. 31, lines 2-4; p. 35, lines 3-6). Moreover, after his interviewers told him that text messages had been sent to Person A's cell phone from Person B's cell phone at a point in time when Person B did not have his phone because he was inside a holding cell, his interviewers then asked him three separate times whether he could explain this. Each time he was asked this question, he answered that he had no explanation (DX 3 p. 29, lines 3-5; p. 31, lines 5-10; p. 35, lines 14-16).

Near the end of his official Department interview, Respondent Prieto was once again asked, "What would be your explanation?" He answered that during the only period of time when he was not personally holding Person B's phone, "it was in a secure envelope in a desk in the office." and that other than the members of his team, he did not know who else had the key to the

desk (DX 3 p. 36, lines 1-11). This answer falls short of creating a false description of events regarding who had sent text messages to Person A.

Finally, at the very end of his official Department interview, Respondent Prieto was confronted with the fact that the text message exchanges indicated "a past dealing" between Person A and the person who was texting her since this person reminded Person A that he had helped her out on a previous occasion. When Respondent Prieto was then asked, "To the best of your knowledge, who else in that precinct would have had prior contact with Person A to have that kind of conversation?" he answered, "I have no idea."

Since the transcript of Respondent Prieto's official Department interview shows that he merely denied the accusation that he had sent text messages to Person A and that in making these denials he did not offer a scenario regarding the sending of the text messages which created a false description of events, this charge is inconsistent with the mandate established under Patrol Guide Procedure No. 203-08. Therefore, I recommend that Specification No. 4 be dismissed.

PENALTY RECOMMENDATIONS

In order to determine appropriate penalties, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 N.Y.2d 222 (1974). Respondent Reyes and Respondent Prieto were both appointed to the Department on July 6, 2010. Information from their personnel records that was considered in making these penalty recommendations is contained in attached Confidential Memoranda. Neither Respondent Reyes nor Respondent Prieto has a prior formal disciplinary record.

Respondent Reyes has been found guilty of preparing a Complaint Report in which he classified an incident as a petit larceny when it should have been classified as a grand larceny.

The Advocate recommended that Respondent Reyes forfeit 15 vacation days as a penalty. To support this recommendation, the Advocate cited two previous decisions, one signed in 2013 and one signed in 2014. In a more recent decision, *Case No. 2013-10908* (signed March 22, 2016), a ten-year police officer who had no prior disciplinary record forfeited ten vacation days as a penalty after he was found guilty of preparing a complaint report classifying an incident as a petit larceny when the crime should have been classified as a robbery and failing to notify the detective squad that further investigation was required since the crime had involved a firearm.

Most recently, in *Case No. 2015-14241* (signed Aug. 8, 2016), a lieutenant who had no prior disciplinary adjudications was found guilty of having improperly directed a police officer to change a Complaint Report Worksheet by reclassifying the complaint from a grand larceny complaint to a lost property complaint and having improperly directed the officer to enter an inaccurate factual narrative in the details section of the Complaint Report Worksheet. Although the Trial Commissioner recommended that the lieutenant forfeit 15 vacation days as a penalty, the Police Commissioner imposed a penalty of the forfeiture of ten vacation days.

Therefore, it recommended that Respondent Reyes forfeit ten vacation days as a penalty.

Respondent Prieto has been found guilty of the same misclassification charge that Respondent Reyes has been found guilty of and he has also been found guilty of having failed to make any entries in his Activity Log on a day when he performed a full tour of duty.

Much more seriously, Respondent Prieto has also been found guilty of wrongfully asking Person A, an arrestee, to show him her breasts; wrongfully sending sexually explicit text messages to Person A; and associating with Person A, who he knew had engaged in criminal activity.

The Advocate recommended that Respondent Prieto be dismissed from the Department. I concur with the Advocate's recommendation because the record establishes that Respondent Prieto abused and demeaned his position as a police officer, solely for the purpose of obtaining personal sexual titillation, when he told Person A that he would issue her a DAT if she showed him her breasts, and when he used Person B's cell phone, which he possessed because he had arrested Person B, to send sexually explicit text messages to Person A. In the text messages he sent to Person A, he not only made inappropriate sexual comments, he requested that she send him a photo of her genitalia ("Take a pic. Send it. Send me u pussy."). He also told Person A that he wanted to come to her residence to have "fun" while Person B was in custody. Finally, he reminded her that he had arranged for her to be issued a DAT so that she could be released from custody at the precinct ("I helped you out remember.").

With regard to Respondent Prieto's misconduct of wrongfully asking Person A, an arrestee, to show him her breasts, in *Case No. 2004-79920* (signed Sept. 5, 2008), the Police Commissioner dismissed a detective from the Department for engaging in similar misconduct. In that case, the detective was found guilty of having asked a female arrestee to pull up her shirt to expose her breasts so that he could take a photograph of her breasts. That detective was also found guilty, in an unrelated case, of a charge that he took lewd photographs of a complaining witness while she was lying in a hospital bed, as well as other misconduct.⁴

With regard to Respondent Prieto's misconduct of wrongfully sending sexually explicit text messages to Person A, in *Case No. 2011-5025* (signed Aug. 23, 2013), an 18-year detective who had no prior disciplinary record received a penalty of dismissal probation and the forfeiture

⁴ On appeal, the Appellate Division held that the detective should be allowed to apply for vested interest retirement from the Department because the penalty of dismissal had deprived the detective of his retirement benefits. See *Lecchio v Kelly*, 94 AD3d 545 (1st Dep't 2012).

of 30 vacation days for exchanging multiple sexual text messages with an arrestee. That detective was also found guilty of having failed to investigate a cross-complaint regarding a sexual assault the arrestee may have committed during a [REDACTED].

More recently, in *Case No. 2015-14217* (signed Feb. 8, 2016), a ten year detective who had no prior disciplinary adjudications forfeited 30 vacation days and was placed on dismissal probation for exchanging 442 text messages, some of which were of a sexual nature, with a woman he had previously arrested for a narcotics offense and for discussing the facts of her case with her.

Most recently, in *Case No. 2015-13061* (signed April 18, 2016), a nine-year police officer who had no prior disciplinary record received a penalty of dismissal probation and the forfeiture of 30 vacation days for sending a sexually explicit text message to a female he met when he responded to a domestic incident in which [REDACTED]. That officer also failed to prepare a Domestic Incident Report documenting the incident; failed to provide the dispatcher with a proper radio disposition that he had responded to a domestic incident; and failed to make a proper entry in his Activity Log regarding his response to this domestic incident.

Finally, Respondent Prieto not only associated with Person A, who he knew had engaged in criminal activity, by sending her sexual text messages, he sought to have an even more personal and intimate relationship with her when he texted her that he wanted to come to her residence to have "fun" with her while Person B was in jail.

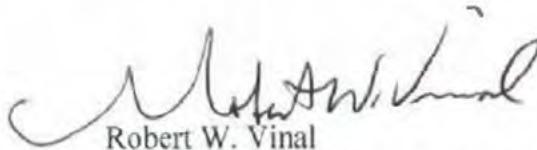
Respondent Prieto submitted a "Commanding Officer's Recommendation" signed by the commanding officer of the 40 Precinct (CO) in which the CO rated him as "Recommend," but

not "Highly Recommend." He also submitted citations from City Council Members and a State Assemblywoman honoring him as the 40 Precinct "Cop of the Month" for May, 2014.

Despite the fact that Respondent Prieto has no formal disciplinary record and good performance evaluations during his six years of service, I find that his misconduct here regarding Person A was highly unbecoming for a New York City Police Officer and that this misconduct embarrassed this Department and brought it into disrepute.

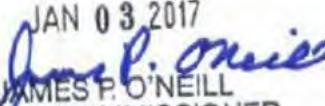
Therefore, I recommend that Respondent Prieto be DISMISSED from the New York City Police Department.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

JAN 03 2017

JAMES P. O'NEILL
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER WILSON PRIETO
TAX REGISTRY NO. 949507
DISCIPLINARY CASE NOS. 2015-13805 & 2015-13794

Respondent received an overall rating of 4.0 on his 2015 annual evaluation, 4.5 on his 2014 evaluation, and 4.5 on his 2013 evaluation. He has been awarded one Meritorious Police Duty medal and six Excellent Police Duty medals. [REDACTED]

[REDACTED] He has no monitoring records. He has no formal disciplinary record.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER HENRY REYES
TAX REGISTRY NO. 949538
DISCIPLINARY CASE NO. 2015-13804

Respondent received an overall rating of 4.5 on his 2015 annual evaluation, 4.5 on his 2014 evaluation, and 4.5 on his 2013 evaluation. He has been awarded eight Excellent Police Duty medals.

He has no formal disciplinary record.

[REDACTED] He has no monitoring records.

For your consideration.

Robert W. Vinal
Assistant Deputy Commissioner Trials